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OFFICE OF PETITIONS

In re Application of	:	
Massie, et al.	:	
Application No. 10/656,372	:	ON PETITION
Filed: February 4, 2004	:	
Attorney Docket No. 10890-1C	:	

This is a decision on the papers styled, "Petition For Granting of Filing Date," filed April 20, 2004, which has been treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of September 8, 2003, including the specification.

The application was submitted on September 8, 2003. However, on December 15, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application," (Notice) that stated the application had not been accorded a filing date, and that the specification appears to have been omitted.

In response, on February 4, 2004, a copy of the specification was submitted. On April 20, 2004, the instant petition was filed.

Petitioner states, "The circumstances involved are that when the above appilcation was filed in the USPTO on September 8, 2003, the papers submitted inadvertently omitted a copy of the parent application 09/843,949 filed 04/30/2001 now US Patent No. 6,642,052 issued November 4, 2003. The papers did include however a copy of the original Declaration; a copy of the original Assignment document; a Preliminary Amendment to insert the parent application information into the original specification; the filing fee; and the Utility Patent Application Transmittal, indicating in Box 18 that this application is a Divisional of prior application 09/843,949..."

Petitioner appears to request the use of the incorporation by reference statement in Box 18 of the Utility Patent Application Transmittal to incorporate-by-reference the specification of prior application no. 09/843,949 in order to accord the above-identified application a filing date of September 8, 2003. However, please note MPEP 201.06(c):

"A. Application NOT Entitled to a Filing Date

Material needed to accord an application a filing date may not be incorporated by reference. Therefore, if a continuation or divisional application as originally filed incorporates by reference material omitted from the application papers, which is needed to accord the application a filing date, the application will **not** be entitled to a filing date. A petition under 37 CFR 1.182 and the required petition fee, including an amendment submitting the necessary omitted material, requesting that the necessary omitted material contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement, is required in order to accord the application a filing date as of the date of deposit of the continuation or divisional application. An amendment submitting the omitted material and relying upon the incorporation by reference will not be entered in the continuation or divisional application unless a decision granting the petition states that the application is accorded a filing date and that the amendment will be entered."

It is noted that the required amendment has not been submitted with the instant petition. At the present time, the petition must be dismissed. However, this decision is made without prejudice to reconsideration.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 Box 1450
 Alexandria, VA 22313

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The application shall retain the February 4, 2004 filing date,
the date of submission of the specification.

Telephone inquiries should be directed to the undersigned at
(571)272-3228.

A handwritten signature in dark ink, appearing to read 'EJ Tannouse', followed by a long horizontal line extending to the right.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office